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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/617,045 07/14/00 MOGIL

M P100570-0600

EXAMINER

QM32/0608

ARENT FOX KINTNER PLOTKIN & KAHN PLLC  
1050 CONNECTICUT AVENUE NW  
SUITE 600  
WASHINGTON DC 20036-5339

FIDEL,D

ART UNIT

PAPER NUMBER

3728

DATE MAILED:

06/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/617,045

Applicant(s)

MOGIL, MELVIN S.

Examiner

David T. Fidei

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 30-32 and 36 is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: .

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9, 12-26, 28, 29 and 33-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 40-43 of U.S. Patent No. 6,237,776 in view of Christopher (US Patent no. 4,468,933). The difference between the prior patented claims and the subject matter presently claimed resides in an-opened top receptacle mounted to the insulated sidewall, i.e., the prior patented claims contain at least the subject matter recited herein except for the sidewall receptacle.

Christopher figure 1 discloses that it is well known to those skilled in the art to modify portable cooler bags by attaching open top receptacles 31, 32. It would have been obvious to one of ordinary skill in the art to modify the cooler recited in claims 40-43 of U.S. Patent No. 6,237,776 by constructing a sidewall pocket as taught by Christopher, in order to carry diverse components without opening the container, note the last two lines of the abstract.

With respect to the contents of the pocket/pockets it is well known within this art and within the level of ordinary skill to provide a drink bottle pack structures, e.g. note patent no. 5,567,055 figure 3 with bottle 49. It would have been obvious to one of ordinary skill in the art

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to provide a drink bottle with the receptacle as a matter of routine skill for the reason of providing an easily accessible liquid refreshment.

3. Claims 1-9, 12-26, 28, 29 and 33-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. Des. 419,770 in view of Christopher (US Patent no. 4,468,933). The difference between the prior patented claim and the subject matter presently claimed resides in an-opened top receptacle mounted to the insulated sidewall, i.e., the prior patented design contains at least the subject matter recited herein except for the sidewall receptacle.

Christopher figure 1 discloses that it is well known to those skilled in the art to modify portable cooler bags by attaching open top receptacles 31, 32. It would have been obvious to one of ordinary skill in the art to modify the cooler recited in claims 40-43 of U.S. Patent No. 6,237,776 by constructing a sidewall pocket as taught by Christopher, in order to carry diverse components without opening the container, note the last two lines of the abstract.

With respect to the contents of the pocket/pockets it is well known within this art and within the level of ordinary skill to provide a drink bottle pack structures, e.g. note patent no. 5,567,055 figure 3 with bottle 49. It would have been obvious to one of ordinary skill in the art to provide a drink bottle with the receptacle as a matter of routine skill for the reason of providing an easily accessible liquid refreshment.

4. Claims 10, 11 and 27 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the prior application as applied to claims 1-9, 12-26 and 28-36 above, and further in view of Rausch (US Patent no. 5,842,571). Rausch discloses that it is well known to those skilled in this art to provide a receptacle with a shroud having a drawstring. It would have been obvious to one of ordinary skill in the art to modify the exterior pocket by including a shroud member as taught by Rausch for the purposes of tightly enclosing the contents

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***Allowable Subject Matter***

5. Claims 30-32 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning the MERITS of this examination from the examiner should be directed to David T. Fidei whose telephone number is (703) 308-1220. The examiner can normally be reached on Monday - Friday 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T. Sewell can be reached on (703) 308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and same for After Final communications.


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Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>

  
David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
June 4, 2001